

STATE OF MICHIGAN
COURT OF APPEALS

BAHJAT INVESTMENT, INC.,

Plaintiff-Appellant,

v

PARK N' JET AIRPORT PARKING, INC.,

Defendant-Appellee.

UNPUBLISHED

February 7, 2006

No. 256650

Wayne Circuit Court

LC No. 02-238510-CH

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the summary dismissal of its complaint and the denial of its motion for summary disposition in this dispute regarding an easement agreement. We reverse.

On October 29, 2002, plaintiff filed its complaint against defendant averring that it owned and operated a business on Parcel A, which was north of and contiguous with Parcel B, and defendant owned and operated businesses on Parcel B and Parcel C, with Parcel B being north of and contiguous with Parcel C. Plaintiff further averred that its predecessor in interest granted to defendant's predecessors in interest a thirty-foot easement across Parcel A for the benefit of Parcel B. The expressed purpose of the easement was "for ingress and egress and for vehicular traffic to and from Grantee's property." However, when defendant acquired Parcel C, which is operated as a parking lot near the airport, defendant began using the easement for the benefit of Parcel C, allegedly contrary to the terms of the easement. Plaintiff also claimed that defendant materially altered the easement from its intended purpose by constructing it as a one-way egress only. Plaintiff, thus, brought several claims against defendant, including easement overburdening, unilateral alteration of the easement outside its scope, trespass, bad faith/intentional intermingled use of the easement (because Parcels B and C are not separated), and continuous trespass by construction (because light standards and curbs were constructed by defendant outside of the easement, on plaintiff's property). Plaintiff sought declaratory and injunctive relief, as well as money damages.

On December 10, 2003, plaintiff filed its motion for summary disposition pursuant to MCR 2.116(C)(10), and argued that there was no question of material fact that defendant overburdened the easement, changed the easement, and had continuously trespassed across plaintiff's property. Plaintiff indicated that the ingress/egress easement across Parcel A had been granted in 1969 explicitly "for the benefit of Parcel B." At some point, defendant acquired Parcel B and Parcel C and, in 1996, began operating a parking facility, permitting parking on

both parcels. The patrons of the parking facility enter through Parcel B, park on either Parcel B or C, and exit the facility by using the easement across Parcel A.

Plaintiff argued that the easement agreement clearly did not include Parcel C, was not a one-way easement, and clearly did not contemplate use of the easement by so many vehicles exiting a parking lot facility. Plaintiff offered as evidence to support its claims excerpts of the deposition testimony of a surveyor, Todd D. Shelly, who testified that (1) light poles and a portion of the drainage system lie outside of the easement and on Parcel A, and (2) the easement grants were not intended to benefit Parcel C, only Parcel B. A surveyor's plan depicting the three parcels and the easement was submitted. Plaintiff also offered defendant Oram's deposition testimony which included that none of Parcel C was being used and only a portion of Parcel B was being used prior to defendant purchasing the parcels and presently about 2000 cars a week used the easement.

Defendant responded to plaintiff's motion, arguing that the "two recorded easements provide parcels B and C with explicit rights to use the 30 foot wide right of way across parcel A for their benefits." In support of that assertion, defendant argued that the surveys of the property demonstrate that the easement abuts the legal description of Parcel C, and runs along the western boundary of Parcel B. Further, defendant argued, its use has not overburdened the easement; rather, the use was reasonable in light of the commercial businesses on the dominant and servient estates and nearby airport. And, plaintiff failed to establish that the extraordinary remedy of injunctive relief was warranted.

In a supplemental brief, defendant presented a survey drawing, which illustrated the location of the parcels and of the easement. Defendant claimed that the drawing plainly showed that one easement extended south from Smith Road to the edge of Parcel C and the other easement grant extended for the same length, but also extended east toward and touching Parcel B. Defendant also submitted a mortgage survey dated October 24, 1988, depicting Parcel C and the easement, which is shown as providing access to and from Smith Road for the benefit of Parcel C. Finally, defendant submitted a drawing from the city of Romulus' records which depicted the three parcels and demonstrated the shape of Parcel C as extending north across and/or along Parcel B to touch the easement. Defendant argued that, minimally, there was a question of fact whether the easement was designed to benefit Parcels B and C; thus, plaintiff's motion for summary disposition should be denied. Following oral arguments on plaintiff's motion, the trial court agreed with defendant, holding that the easement was granted to Parcels B and C and the use was reasonable. Plaintiff's motion for summary disposition was denied and the case was dismissed. An order was entered accordingly and plaintiff filed a motion for reconsideration, which was also denied. This appeal followed.

Plaintiff argues that the trial court erroneously concluded that the easement benefited both Parcel B and Parcel C and, thus, summary dismissal was improper. After review de novo of the trial court's decision to grant summary disposition on the ground that there was no genuine issue of material fact, we agree. See MCR 2.116(C)(10); *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004).

An easement is the right to use the land burdened by the easement for a specified purpose. *Schadewald v Brule*, 225 Mich App 26, 35; 570 NW2d 788 (1997). "An easement does not displace the general possession of the land by its owner, but merely grants the holder of

the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement.” *Id.*; see, also, *Michigan Dept of Natural Resources v Carmody-Lahti Real Estate, Inc.*, 472 Mich 359, 378-379; 699 NW2d 272 (2005). The scope of an easement is strictly confined to the purposes for which it was granted. *Crew’s Die Casting Corp v Davidow*, 369 Mich 541, 546; 120 NW2d 238 (1963). An easement cannot be modified unilaterally by either party and the owner of the easement cannot materially increase or impose a new burden on the servient estate. *Schadewald, supra* at 36.

Here, plaintiff argues that the easement grant did not benefit Parcel C. To determine if Parcel C was granted rights to use the easement, the text of the easement grant must be considered.

Where the language of a legal instrument is plain and unambiguous, it is to be enforced as written and no further inquiry is permitted. If the text of the easement is ambiguous, extrinsic evidence may be considered by the trial court in order to determine the scope of the easement. [*Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003) (citation omitted).]

Therefore, we turn to the text of the easement. Two easement grants are at issue; in the first, recorded on July 21, 1969, at Liber 17082, Page 950 of the Wayne County Register of Deeds, Jerome J. Fellrath granted and conveyed to Don McCullagh, Inc., its successor and assigns,

a non-exclusive easement on, over and across a strip of property thirty (30) feet wide . . . more particularly described on Exhibit “A” The purpose of such easement is for ingress and egress and for vehicular traffic to and from Grantee’s property, which is more particularly described on Exhibit “B”, and Smith Road and such easement shall be for the benefit of said property described on Exhibit “B” whether the same is owned by Grantee or a subsequent purchaser thereof.

Exhibit A contained the legal description of the thirty foot easement and Exhibit B contained the legal description of the grantee’s property, “a parcel containing 10.576 acres more or less.” By the second easement grant, recorded on July 21, 1969, at Liber 17085, Page 1 of Wayne County Register of Deeds, Don McCullagh, Inc. granted and conveyed to Ramada Inns, Inc., its successors and assigns,

a non-exclusive easement on, over and across a strip of property thirty (30) feet wide . . . more particularly described on Exhibit “A” The purpose of such easement is for ingress and egress and for vehicular traffic to and from Grantee’s property, which is more particularly described on Exhibit “B”, attached hereto and made part hereof, and Smith Road.

Exhibit A contained the legal description of the thirty foot easement and Exhibit B contained the legal description of the grantee’s property, a “parcel containing 10.00 acres.”

It appears from the evidence submitted by the parties that there is a question of fact whether a portion of the property to be benefited by the original easement grant, as described in Exhibit B, was included in a subsequent conveyance. More particularly, the western-most part of the original property described in Exhibit B appears to have become part of Parcel C, and

Parcel C was not granted easement rights. Dimensions of an easement do not change merely because a portion of the property benefited by the easement is subdivided and added to an adjacent piece of property to increase the adjacent property's size. It appears here that the western-most portion of the property benefited by the initial easement, as described in Exhibit B, was subdivided and added to Parcel C so that Parcel C could use that easement. But, the whole of Parcel C would not be entitled to use the easement—only the portion of Parcel C that was specifically described in Exhibit B, i.e., that was formally part of Parcel B, of the original easement grant is entitled to use the easement. Allowing all of Parcel C to use the easement would significantly change the scope of the easement created by the agreement. Such a unilateral change to the scope of the easement would be improper and would materially increase the burden on the servient estate. See *Schadewald*, *supra*.

The easement on Parcel A was specifically “for the benefit of said property described on Exhibit ‘B’,” which was effectively Parcel B, not Parcel C, a much larger parcel. The use of the easement “for ingress and egress and for vehicular traffic” from Parcel C, would be contrary to the unambiguous text of the original easement grant and obviously not within the contemplation of the original easement agreement. See *Barbaresos v Casaszar*, 325 Mich 1, 7-8; 37 NW2d 689 (1949); *Soergel v Preston*, 141 Mich App 585, 589; 367 NW2d 366 (1985). Therefore, we reverse the grant of summary disposition in defendant's favor on this ground.

However, it is unclear from the record presented whether plaintiff had standing to bring this suit; therefore we remand for further proceedings, including for determination of the issue of standing, as well as the issues (1) whether the property to be benefited, as depicted in Exhibit B of the original easement grant, was changed as discussed above and, if so, whether defendant acquired an easement by prescription or necessity, (2) whether plaintiff is entitled to declaratory and injunctive relief, and (3) whether plaintiff is entitled to damages for trespass.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper
/s/ Pat M. Donofrio